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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/795,797	03/08/2004	Charles L. Gray JR.	310121.415	7696

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EXAMINER

KERSHTEYN, IGOR

ART UNIT PAPER NUMBER

3745

DATE MAILED: 09/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/795,797	Applicant(s) GRAY, CHARLES L.	
	Examiner Igor Kershteyn	Art Unit 3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 and 35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-10 and 20-30 is/are allowed.
- 6) ☒ Claim(s) 11-14, 16-19, 31-33 and 35 is/are rejected.
- 7) ☒ Claim(s) 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/5/06</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed 07/26/2006 have been fully considered but they are not persuasive.

Claims 1-33, and 35 are currently pending. Claim 34 has been cancelled. Claims 31-33, and 35 have been amended.

In the Arguments, Applicant generally stated that "With regard to the rejection of claim 11 under 35 U.S.C. § 103, the representative noted that each of the prior art references relied upon to reject claim 11 teaches a pin on which its yoke rotates, while claim 11 recites a trunnion coupled to the yoke. Thus, the bearing disclosed in the Molly reference is positioned between the pin and the yoke, rather than between the trunnion and the wall of the aperture (of the casing), as recited in claim 11."

This statement is not agreed with because prior of record, for example reference to Harry Vickers (2,525,979), explicitly teaches the structural element 34, which is similar to that of Molly and Ebert, being a trunnion.

Further, Applicant states that "Applicant understands that Examiner Kershteyn acknowledged that this distinction was sufficient to distinguish claim 11 over the art currently of record." This statement is not agreed with because during the interview Examiner mentioned that it appears from the Application drawings that the yoke is formed with the trunnion and the references to Molly and Ebert teach the trunnions being separate parts.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, and 12-14, 16, and 31-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ebert (2,931,250) in view of Molly (4,034,650).

In figures 1, 2, 4, and 4a, Ebert teaches a pump/motor comprising a yoke 72,73 configured to carry a rotatable barrel 26,27,74,75; a trunnion 28,29 coupled to the yoke 72,73 and configured to be received by an aperture (not numbered) of a pump casing 1, and a fluid channel 81,82,85,86 passing within the yoke 72,73 to the trunnion 28,29 and exiting the trunnion 28,29 via an aperture (not numbered) positioned between the two planes.

Ebert teaches all the claimed subject matter but he doesn't teach a bearing between the trunnion and a wall of the aperture in a position defined by two parallel planes transverse to an axis of the trunnion.

Molly, in figures 7-9, teaches a pump/motor having a yoke 8, and a bearing 34 between a trunnion 33 and a wall of the aperture in a position defined by two parallel planes transverse to an axis of the trunnion 4.

Since Ebert and Molly are analogous art because they are from the same field of endeavor, that is the hydraulic bent axis piston machine art, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify

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the machine of Ebert with the a bearing between the trunnion and a wall of the aperture as taught by Molly for the purpose of reducing friction between the trunnion and it's journal.

Claims 14 and 31 require the bearing "to occupy a portion of a circumference of the trunnion of less than 360 degrees" which do not define the structure of the bearing but non-positively recite a portion which the bearing occupies. And further, in the above claims the language "configured to" makes optional but does not limit the above claims to the structure of the components recited following the language "configured to".

See MPEP 2111.04

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ebert (2,931,250) as modified by Molly (4,034,650).

Ebert as modified by Molly teach all the claimed subject matter except that they don't teach the bearing is formed of a bronze alloy and the bearing is impregnated with lubricant. Applicant has not disclosed that having the bearing formed of a bronze alloy and the bearing impregnated with lubricant solves any stated problem or is for any particular purpose. Moreover, it appears that the bearing of Ebert as Modified by Molly, or applicant's invention, would perform equally well with the bearing formed of a bronze alloy and the bearing impregnated with lubricant.

Accordingly, it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have bearing of Ebert as modified by Molly such that the bearing formed of a bronze alloy and the bearing impregnated with

lubricant because such a modification would have been considered a mere design consideration which fails to patentably distinguish over Ebert as modified by Molly.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ebert (2,931,250) as modified by Molly (4,034,650).

Ebert as modified by Molly teach all the claimed subject matter except that they don't teach the bearing comprises a cage frame configured to receive needle rollers, and a plurality of needle rollers coupled to the frame. Applicant has not disclosed that having the bearing comprises a cage frame configured to receive needle rollers, and a plurality of needle rollers coupled to the frame solves any stated problem or is for any particular purpose. Moreover, it appears that the bearing of Ebert as Modified by Molly, or applicant's invention, would perform equally well with the bearing comprising a cage frame configured to receive needle rollers, and a plurality of needle rollers coupled to the frame.

Accordingly, it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have bearing of Ebert as modified by Molly such that the bearing comprises a cage frame configured to receive needle rollers, and a plurality of needle rollers coupled to the frame because such a modification would have been considered a mere design consideration which fails to patentably distinguish over Ebert as modified by Molly.

***Allowable Subject Matter***

Claim 15 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-10 and 20-30 are allowed.

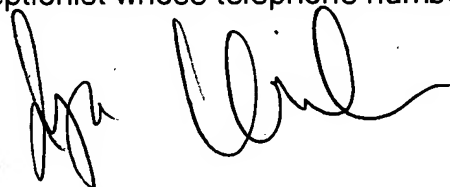
***Contact information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kershteyn whose telephone number is **(571)272-4817**. The examiner can be reached on Monday-Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look, can be reached on **(571)272-4820**. The fax number is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308 0861.

IK  
September 8, 2006



IGOR KERSHTEYN  
PRIMARY EXAMINER

**Igor Kershteyn  
Primary Patent examiner.  
Art Unit 3745**